

Module L

Section 24LA

Low Impact Future Acts

DOES THE PROPOSED FUTURE ACT FIT WITHIN THIS MODULE?

This Module will help you assess whether your proposed future act is a low impact future act.

A low impact future act is an act considered to be low impact in nature and must be capable of being stopped should a determination of native title be made in relation to the particular future act area.

For this Module to apply, your proposed future act must not have fallen within a preceding Module.

If your proposed future act is not a low impact future act, then you will need to proceed to **Module M&N**.

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Part 1 What is section 24LA?

Section 24LA applies to proposed future acts that are considered to be low impact future acts.

Section 24LA states what is NOT a low impact future act rather than what IS a low impact future act, that is, the act -

- must NOT continue after a determination that native title exists, ie. it must be capable of being stopped upon a determination of native title;

AND

- must NOT consist of, or relate to, a number of different acts, ie. it must not fall into one of the exclusions.

Examples of low impact future acts

- the grant of a permit to occupy for a television production;
- placing reference markers in an area for survey purposes;
- the grant of a licence to collect firewood;
- the grant of a temporary permit to conduct bee-keeping;
- the construction of a building that is not a fixture, eg. a demountable shed;
- the establishment of walking track signs.

The requirement that a low impact future act must not continue after a determination of native title suggests that section 24LA is **more appropriate for temporary or intermittent activities** as opposed to long-term activities. Therefore, you will need to carefully consider whether this Module is suitable for your proposed future act, even though it may satisfy the requirements in Part 2 of this Module.

Example

Dedicating an area of land as a State Forest is not a temporary activity but is more long-term in nature. For example, in order to revoke such dedications a resolution must be passed by the Legislative Assembly (having been given a specified number of days notice) requesting the Governor in Council to revoke the dedication. The Governor in Council then must decide whether the dedication should be revoked and if so this must be done by regulation.

Further, dedicating an area whether as a reserve of State Forest, a reserve under the *Land Act 1994* or State Forest (“reserve”) as a low impact future act means that the ONLY acts that can be done on the reserve in accordance with the reserve are other low impact future acts or acts done under a registered Indigenous Land Use Agreement (“ILUA”).¹

Therefore, section 24LA is not appropriate even though the dedication would meet the requirements in Part 2 of this Module.

If the dedication proceeded as a low impact future act it would need to be cancelled upon a determination of native title unless an agreement via a registered ILUA has been reached before the making of the determination or the area is negotiated to be excluded from the determination area.

In contrast, the grant of a permit to occupy for a television production is temporary in nature, i.e. length of the setting up and filming. Therefore, section 24LA is appropriate. As the future act met the requirements of Part 2 of this Module, it was able to proceed as a low impact future act.

This Module is divided into the following divisions –

- A. Identifying low impact future acts
- B. Effect on native title, compensation and decision-making

A. Identifying Low Impact Future Acts

Part 2 Is my proposed future act a low impact future act?

Your proposed future act can proceed as a low impact future act under section 24LA if you are able to satisfy each of the following requirements –

Please refer to the accompanying flowchart.

Requirement 1

¹ However, where you are not relying on the fact that the area is a reserve in order to do the act, then you are not so limited, eg. if your act is the construction of a pipeline which will traverse a number of tenures including the low impact future act reserve, it can be constructed over the reserve if done under section 24KA of the NTA and the requirements of section 24KA are satisfied.

There has been no approved determination that native title exists over the proposed future act area.

Definition – approved determination of native title

An approved determination of native title is a decision made by the Federal Court or High Court that native title does or does not exist over a particular area of land or waters.

If the approved determination of native title is that native title **exists**, then section 24LA can NOT be used.

If the approved determination of native title is that native title does **NOT exist**, then your dealing is not a future act – **Module AD**. Your dealing can proceed without further reference to native title.

AND

Requirement 2

Your proposed future act must be capable of being stopped if a determination is made that native title exists over the area covered by the future act. Your future act cannot continue after the making of an approved determination of native title.

Example – capable of being stopped

A permit to occupy is capable of being stopped as it is terminable at will, ie. there is not a specific time period that must be given to the permit holders to terminate the permit to occupy. In contrast, if land was dedicated as a State Forest as a low impact future act, it would require the Legislative Assembly (on a motion of which at least 14 sitting days notice has been given) to pass a resolution requesting the Governor in Council to revoke the dedication. The Governor in Council then must decide whether the dedication should be revoked and if so this must be done by regulation.²

AND

Requirement 3

Your proposed future act is **not specifically excluded** from being a low impact future act. These specific exclusions are listed in Part 3. If your proposed future act falls into one of these exclusions, you then must check whether it falls into one of the **exceptions to that exclusion** as

² Section 26, *Forestry Act 1959*

outlined in Part 4. If it falls into an exception and you have also satisfied Requirement 1 and Requirement 2 above, then it can proceed as low impact future act.

Example – exclusions and exceptions

The grant of a mining lease cannot proceed as a low impact future act as mining falls into one of the exclusions. However, an exception to the mining exclusion is fossicking with hand held implements. If your future act is fossicking with hand held implements and you have satisfied Requirement 1 and Requirement 2 above, then it can proceed as a low impact future act.



If your future act satisfies ALL of the above criteria then it is a low impact future act under section 24LA of the NTA and will be valid in relation to native title. **There are no procedural rights that must be provided to the native title parties.** You should now take the following steps –

Step 1

Complete your Native Title Assessment Form – **Annexure 7.1.**

Step 2

If your proposed future act is the grant of a licence, permit or authority you will need to include the following wording (or similar) as a condition of the licence, permit or authority -

Should it be determined at some future date by any Court that native title exists over the subject land or waters, this [insert licence, permit or authority] may be terminated and the [insert licensee, permit holder or authority holder] (or any subsequent [insert licensee, permit holder or authority holder]) may be required to remove any works established under this [insert licence, permit or authority] at the [insert licensee's, permit holder's or authority holder's] (or any subsequent [insert licensee's, permit holder's or authority holder's]) own cost, expense and risk. In that event, no compensation for works, development costs or loss of income shall be payable to the [insert licensee, permit holder or authority holder] (or any subsequent [insert licensee, permit holder or authority holder]) by the State of Queensland.



If your future act does not satisfy ALL of the above requirements you must consider whether your future act is caught by **Module M.**

Part 3 Exclusions - acts that are not low impact future acts

If your proposed future act consists of, authorises or otherwise involves ANY one of the following, then it can NOT proceed as a low impact future act UNLESS it falls into the exception for the particular exclusion as outlined in Part 4 –

- (a) the grant of a freehold estate in any of the land or waters;
- (b) the grant of a lease over any of the land or waters;
- (c) the conferral of a right of exclusive possession over any of the land or waters;

NB. This means the conferral of a right to exclude all others from a particular area of land or waters.

- (d) the excavation or clearing of any of the land or waters;

Definitions

“excavate”

The Oxford Dictionary and Thesaurus defines “excavate” as make (a hole or channel) by digging, dig out material from (the ground); reveal or extract by digging; dig systematically into the ground to explore. Therefore, for example, the digging of holes for plants is excavation.

“clearing”

The Oxford Dictionary and Thesaurus defines “clearing” as including “an area in a forest cleared for cultivation”.

Examples

- Excavation for the construction of a dam on a particular area of land.
- The clearing of a hectare of bush for the purpose of selling the timber to a wood chip company.

- (e) mining;

Example

The grant of a mining lease to Goldtin Ltd.

- (f) the construction or placing on the land, or in the waters, of any building, structure, or other thing, that is a fixture;

Definition - Fixture

A fixture is an item attached to the ground other than under its own weight. An item which is a fixture ceases to be the personal property of the person who attached it to the land as the item becomes part of the land.

It is difficult to always know whether something is a fixture. For example, office partitions which were not just sitting on the floor by their own weight but were secured to the floor and walls by nails and bolts were held by the Federal Court not to be a fixture.³ However, the general rule in relation to fixtures is where something is affixed to the land even slightly it is to be considered as part of the land, unless the circumstances are such as to show that it was intended all along to continue as a personal possession.⁴

Example

A demountable, eg. a ranger's hut, is a building that just sits on the ground and therefore is unlikely to be a fixture as it is not attached to the ground. It is likely to be considered a fixture when it is attached to the ground by cementing the stumps to the ground and/ an electricity line/sewerage pipes/water pipes are attached to the demountable.

- (g) the disposal or storing, on the land or in the waters, of any garbage or any poisonous, toxic or hazardous substance.

Examples

- The establishment of a rubbish dump.
- The construction of a tailings dam.
- The piling of drums full of toxic waste on a particular area of land.

³ *Ball-Guymer v Livantes* (1990) 102 FLR 327

⁴ *Holland v Hodgson* (1872) LR 7 CP 328; [1861-73] All ER Rep 237

Part 4 Exceptions to the exclusions at Part 3 – acts that are low impact future acts

The following acts are specifically mentioned in section 24LA as exceptions to the excluded acts set out at Part 3 –

Exception to mining exclusion

If your proposed future act was caught in the mining exclusion in Part 3 but your proposed future act is **fossicking by using hand-held implements**, then your proposed future act is not excluded and may proceed as a low impact future act.

Exception to construction exclusion

If your proposed future act was caught in the construction exclusion in Part 3 but your proposed future act is **the construction of a fence or a gate**, then your proposed future act is not excluded and may proceed as a low impact future act.

Exceptions to excavation/clearing exclusion

If your proposed future act was caught in the excavation/clearing exclusion in Part 3 but your proposed future act is **one of the following**, then your proposed future act is not excluded and may proceed as a low impact future act -

- excavation or clearing that is reasonably necessary for the protection of public health or public safety;

Example

The removal of earth that may present a landslide hazard to a road adjacent to the land or waters.⁵

The removal of tailings from an old mine site.

The construction of a firebreak using earthmoving equipment.

- tree lopping;

Example

Removing a branch of a tree overhanging a public place.

⁵ *Explanatory Memorandum to the Native Title Amendment Bill 1997*, Table 14.1, page 140.

- clearing of noxious or introduced animal or plant species;

Example

Using chemicals (eg. fogging) to kill mosquito larvae OR cutting down rubber vine.

- foreshore reclamation;

Example

The dumping of sand to restore an eroded beach.²

Works for the purpose of foreshore restoration or protection.

- regeneration or environmental assessment or protection activities.

Example

The planting of native trees or the protection of streambeds from erosion.²

B. Effect on Native Title, Compensation and Decision-Making

Part 5 Does the non-extinguishment principle apply?

Yes, the non-extinguishment principle applies to all future acts that proceed under section 24LA.

This means that native title rights and interests affected by the doing of the future act continue to exist and are not extinguished. However, while the future act exists, those native title rights and interests have no effect on the future act.

Part 6 Is compensation payable for the doing of the future act?

There is NO compensation payable under this section for the effect of the future act on native title rights and interests.

Part 7 Who makes the decision whether this module applies?

There are no actual delegations to make decisions in relation to native title under the Native Title Work Procedures, the NTA or the NTQA.

The native title assessment process is just one part of your decision-making process when making your decision under your legislation, eg. a decision to grant a permit. By carrying out a native title assessment, you are ensuring your decision complies with the NTA.

If the decision-maker is unsure how to proceed, your NTCO must be contacted for advice. If the NTCO is unsure how to proceed, the NTCO must contact Aboriginal and Torres Strait Islander Land Services for advice.

If this Module does not apply to the proposed future act,
please proceed to the next Module.

